IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.575 of 2007

For Approval and Signature :

HONOURABLE THE ACTING CHIEF JUSTICE MR.J.M.PANCHAL

HONOURABLE MR.JUSTICE BHANWAROO KHAN

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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Ram Karan - Appellant
Versus
State of Rajasthan & ors. - Respondents

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Appearance :

Mr. Rajeev Purohit, for the appellant.

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CORAM:HONOURABLE THE ACTING CHIEF JUSTICE MR.J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BHANWAROO KHAN

Date : 16/08/2007

ORAL JUDGMENT

(Per:HONOURABLE THE ACTING CHIEF JUSTICE MR.J.M.PANCHAL)

The instant appeal filed under Rule 134 of the Rajasthan High Court Rules and Section 18 of the Rajasthan High Court Ordinance is directed against order dated March 21, 2005 rendered by the learned Single Judge of this Court in S.B. Civil Writ Petition no.1708/1994 by which the learned Single Judge has taken the view that the writ petition filed by the appellant is not maintainable before the Rajasthan High Court at Jodhpur and directed the Registry of this Court to place record of the case before the Chief Justice for passing appropriate order with regard to transfer of the writ petition to Jaipur Bench of this Court.

The Assistant Collector, Ajmer decreed the suit filed by the appellant against respondent nos.5 to 11 by judgment dated November 22, 1985. Feeling aggrieved, the respondent nos.5 to 11 filed an appeal before the Revenue Appellate Authority, Ajmer. The Revenue Appellate Authority, Ajmer dismissed the appeal by judgment dated July 5, 1991. Thereupon, the respondent nos.5 to 11 filed second appeal before the Board of Revenue Rajasthan at Ajmer. The said appeal came to be accepted by the Board of Revenue at Ajmer by judgment dated November 25, 1993. Thereupon, the appellant invoked extra ordinary jurisdiction of this Court under Article 226 of the Constitution by filing civil writ no.1708/1994. The learned Single Judge was of the

opinion that in view of the decision in Rajasthan High Court Advocates' Association Vs. Union of India and Ors (2001) 2 SCC 294, the High Court at Jodhpur had no jurisdiction to hear the petition filed by the appellant and that the Jaipur Bench of the High Court has jurisdiction to hear the petition. Under the circumstances, the learned Single Judge by order dated March 21, 2005 has directed the Registry of this Court to place record of the case before the Chief Justice for passing appropriate orders with regard to transfer of the writ petition to Jaipur Bench of this Court giving rise to the instant appeal.

This Court has heard Mr. Rajeev Purohit, learned counsel for the appellant.

The plea that decision in Rajasthan High Court Advocates' Association (supra) is prospective, and therefore the direction given by the learned Single Judge in the impugned order deserves to be set aside, cannot be accepted. The decision of the Supreme Court is not prospective in nature. The Supreme Court has not laid down that the principle propounded by it would be operative only from the date of pronouncement of the judgment which is December 15, 2000. After examining the scheme envisaged under High Court of Rajasthan (Establishment of a Permanent Bench at Jaipur)

Order, 1976, States Reorganisation Act, 1956, Rajasthan High Court Ordinance 1949 and Presidential Order, the Supreme Court has held as under:-

> "The Presidential Order having established a permanent Bench of the High Court of Rajasthan at Jaipur and having appointed the minimum number of Judges as would sit at Jaipur proceeded to declare that the permanent Bench seat at Jaipur shall exercise the jurisdiction and power for the time being vested in the High Court in respect of cases arising in the districts, 11 in number, as mentioned therein. A discretionary jurisdiction is also conferred on the Chief Justice of the High Court to order that any case or class of cases arising in any district forming part of territorial jurisdiction of the permanent Bench at Jaipur shall be heard at Jodhpur(principal seat). The Presidential Order is clear. The jurisdiction allocated to the permanent Bench at Jaipur is by reference to territory covered by the 11 specified districts. The proviso appended to para 2 of the Presidential Order speaks of "any case or class of cases" but therefrom too, a power in the Chief Justice to define cause of action cannot be spelled out.
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> The establishment of a permanent Bench at Jaipur and defining its territorial jurisdiction brought out bifurcation of the State of Rajasthan into two for the purpose of division seat and the permanent Bench seat. The Chief Justice of the State cannot, thereafter, artificially or indirectly take away the jurisdiction belonging to one and confer it on the other. Conferring a discretion on the Chief Justice to order any case or class of cases arising in any district within the territorial jurisdiction of permanent Bench at Jaipur shall be heard at Jodhpur

> cannot spell out a power to define where the cause of action shall be deemed to have arisen in a writ case."

The Supreme Court has not clarified that the decision rendered by it would be prospective in nature. It is well settled that the Supreme Court has clarified the position when Rajasthan (Establishment of a Permanent Bench at Jaipur)Order, 1976 was brought into force. Therefore, the direction given by the learned Single Judge cannot be set aside on the ground that the principle laid down in Rajasthan High Court Advocates' Association (supra) is prospective in nature.

The contention that a discretionary jurisdiction is also conferred on the Chief Justice of the High Court to order that any case or class of cases arising in any district forming part of territorial jurisdiction of the permanent Bench at Jaipur shall be heard at Jodhpur(principal seat), and therefore the writ petition filed by the appellant should have been entertained on merits by the learned Single Judge is devoid of merits. The record does not indicate that any specific order was passed by the Chief Justice of the High Court ordering that the petition filed by the appellant would be heard at Jodhpur(principal seat).

As is clear from the decision quoted above, neither the Presidential Order nor Section 44 (2) of the Rajasthan High Court Ordinance nor Section 54 and 57 of the States Reorganisation Act confer power on the Chief Justice to define where cause of action shall be deemed to have arisen in a writ case and that has to be decided judicially in case to case and not by an administrative order. Under the circumstances, the decision rendered by the learned Single Judge cannot be said to be contrary to either the Presidential Order or Section 44(2) of the Rajasthan High Court Ordinance or Section 54 and 57 of the States Reorganisation Act.

Having considered the matter in the light of the decision of the Supreme Court in Rajasthan High Court Advocates' Association(supra), this Court is of the firm opinion that the view taken by the learned Single Judge is eminently just and no case is made out by the learned counsel for the appellant to interfere with the same in the instant appeal. The appeal which lacks merits deserves to be summarily dismissed.

For the foregoing reasons, the appeal fails and is summarily dismissed.

[BHANWAROO KHAN],J. [J.M.PANCHAL],ACTG.CJ.

Praveen